

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CENTRAL LABORERS' PENSION,
WELFARE AND ANNUITY FUNDS,
Plaintiff,

v.

M.D. MAGARY CONSTRUCTION
COMPANY and
HOLLY C. CRAWFORD,
Defendants.

Case No. 20–CV–00661–MAB–JPG

ORDER

This is a civil suit involving unpaid fringe benefits under the Employment Retirement Income Security Act. Before the Court is Plaintiffs Central Laborers' Pension, Welfare and Annuity Funds' Motion for Audit and Default Judgment. (ECF No. 10).

There are two stages to default. First, the Clerk of Court must enter a party's default "[w]hen a party against whom a judgment for affirmative relief has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise" Fed. R. Civ. P. 55. Then, the Court may enter a default judgment for the amount due. *Id.* "Whether a default should be entered . . . is a matter resting in the sound discretion of the trial judge." *Duling v. Markun*, 231 F.2d 833, 836 (7th Cir. 1956).

In August 2020, the Clerk of Court entered default as to both defendants. Even so, the Court cannot yet enter default judgment because the amount due remains unclear. As noted in the plaintiffs' Motion, the contracts entered into by the litigants authorize the plaintiffs to "audit all payroll and all wage, job, bonds and other relevant records of the [defendant] upon reasonable notice for the purpose of determining the accuracy of the [defendant's] contribution to the Funds." (*See* Pl.'s Mot. at 3). Until then, however, the Court will not enter default judgment.

With that in mind, the Court **GRANTS IN PART AND DENIES IN PART** the plaintiffs' Motion for Audit and Default Judgment. Specifically, the Court **ORDERS** the following:

- (1) The defendants must turn over to the plaintiffs all their payroll records and books for the time frame of January 1, 2014 through the most current date possible within 60 days of the entry of this Order so that an Audit may be conducted;
- (2) The defendants must pay all costs attendant to any audit of the payroll records and books;
- (3) The plaintiffs must notify the Court when the defendants comply with the terms of this Order; and
- (4) The plaintiffs must file a renewed motion for default judgment upon completion of the referenced audit.

IT IS SO ORDERED.

Dated: Friday, October 30, 2020

S/J. Phil Gilbert
J. PHIL GILBERT
UNITED STATES DISTRICT JUDGE